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In re Application of  
Morton et al.  
Application No.: 10/554,656  
PCT No.: PCT/GB04/01729  
Int. Filing Date: 23 April 2004  
Priority Date: 25 April 2003  
Attorney Docket No.: CXR101.ORD  
For: Control Means For Heat Load  
In X-Ray Scanning Apparatus

DECISION

This is in response to the correspondence filed on 17 October 2006, which is being treated under 37 CFR 1.497(d).

### **BACKGROUND**

This international application was filed on 23 April 2004, claimed a priority date of 25 April 2003, and designated the United States. The International Bureau transmitted a copy of the published international application to the USPTO on 11 November 2004. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 25 October 2005. Applicants filed *inter alia* the basic national fee on 25 October 2005.

On 25 August 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(h). The Form indicated that "Signature of the second inventor Russell David Luggar is missing, form IB306 is needed of such a change."

### **DISCUSSION**

Inspection of the declaration of inventorship filed on 25 October 2005 reveals that it nominates the same inventive entity as appears on the published international application. However, Russell David Luggar has not executed the declaration, and the section listing data pertaining to him appears to have been altered by being crossed out. The declaration is defective both because Mr. Luggar's signature is missing and because of said un-initialed alteration. The correspondence filed on 17 October 2006 states in part that

Applicant requests that the inventorship be amended to reflect the true and correct inventorship of the present application. In the original filing, Mr. Russell David Luggar was recognized as an inventor. Mr. Luggar is not an inventor of the claims as currently pending. Applicant therefore requests that Mr. Luggar's name be removed as an inventor. Consequently, an oath or declaration from Mr. Luggar is not required.

In view of this statement, which indicates that the reason for the absence of Mr. Luggar's signature is that he is allegedly not a proper inventor (as opposed to being unavailable per 37 CFR 1.42, 1.43 or 1.47), counsel's attention is drawn to 37 CFR 1.497(d), under which the instant correspondence is being treated. A declaration filed under 37 CFR 1.497 (d) must be by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47. The declaration must be accompanied by (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part, (2) the processing fee set forth in 37 CFR 1.17; and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*See* 37 CFR 3.73(b)). *See* Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.).

Regarding requirement (1), applicants have not provided an appropriate statement by Russell David Luggar. Accordingly, requirement (1) has not been satisfied.

Regarding requirement (2), the required processing fee has not been paid.

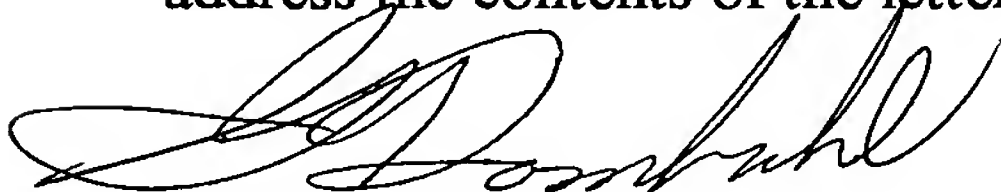
Regarding requirement (3), inspection of the published international application suggests that CRX Limited may enjoy an assignment interest in the instant application, but no written consent of the assignee has been provided.

### **CONCLUSION**

The request under 37 CFR 1.497(d) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497(d)". No additional processing fee is required.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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